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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rulemaking to Amend Parts 1, 2, 21, and 25) CC Docket No. 92-297
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz Frequency)
Band, to Establish Rules and Policies for)
Local Multipoint Distribution Service and for)
Fixed Satellite Services)

To: The Commission

COMMENTS OF BELL SOUTH

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Interactive Media Services (collectively "BellSouth"), by their attorneys, hereby submits these comments in response to the Commission's *First Report and Order and Fourth Notice of Proposed Rule Making*, CC Docket No. 92-297, FCC 96-311 (released July 22, 1996), *summarized*, 61 Fed. Reg. 39,425 (1996) ("*Fourth NPRM*"). In the *Fourth NPRM*, the Commission has proposed to designate, on a primary protected basis, the 31.0-31.3 GHz (31 GHz) band to Local Multipoint Distribution Service ("LMDS"). The Commission has asked for comment on the eligibility of Local Exchange Carriers ("LECs") to obtain LMDS licenses in the areas they serve.¹

DISCUSSION

BellSouth hereby supports the Comments of the United States Telephone Association filed today. When this proceeding was initiated, the Commission proposed to license two equal

¹ *Fourth NPRM* at ¶¶ 95, 105.

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competitors in every LMDS service area, and not to restrict the eligibility of various telecommunications providers to obtain LMDS licenses.² The Commission subsequently proposed to license only one LMDS license for each service area and requested further comment on the eligibility issue.³ The Commission concluded however, that with respect to the eligibility of a LEC to obtain the sole LMDS license in its service area, the Communications Act did not prohibit a LEC from acquiring an LMDS license.⁴

In this proceeding, the Commission now seeks to restrict the participation of LECs in LMDS in the regions that they serve, ostensibly to promote the competitive objectives of the Telecommunications Act of 1996.⁵ BellSouth urges the Commission not to prohibit open eligibility and competition for LMDS licenses, and hereby opposes any restrictions on the participation in auctions for LMDS spectrum. BellSouth believes that an open auction process which allows all interested parties the opportunity to compete for the right to provide LMDS to customers is the best way to achieve the competitive goals of the 1996 Act. Accordingly, BellSouth requests that the Commission reaffirm its previous conclusion in this proceeding to allow open eligibility for LMDS licenses.

² *In the Matters of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service*, CC Docket No. 92-297, *First Notice of Proposed Rulemaking*, 8 F.C.C.R. 557 (1993) ("*First NPRM*").

³ *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference*, CC Docket No. 92-297, *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 53, ¶¶ 97-108 (1995) ("*Third NPRM*").

⁴ *Id.* at ¶ 104.

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

The Commission has noted that “[m]ost parties addressing this issue support unrestricted eligibility for LECs” and that “[n]o party argues there are existing legal restrictions on a LEC . . . acquiring a LMDS license in [its] service area.”⁶ There is now no new basis to prohibit local providers of telephony from competing for LMDS licenses. BellSouth reasserts herein that in light of the various combinations of services that may be provided by LMDS, which parallels the Commission’s goal of diversity of services and technology in the provision of LMDS, no potential class of providers should be excluded from LMDS eligibility. As most commenting parties have noted, “there is no policy-based reason to restrict LECs from holding the LMDS licenses in their service area and . . . LEC participation is in the public interest.”⁷

BellSouth believes that any effort to prohibit LECs from participating in auctions for LMDS licenses in their geographic regions would be contrary to the intent of Congress in the 1996 Act to “provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition.”⁸ Congress specified in the 1996 Act that LECs offer competition to incumbent cable operators when LECs offer video services “by any means,” which Congress defined as including LMDS.⁹ Moreover, there is nothing in the 1996 Act to preclude LECs from actively pursuing LMDS licenses in their geographic areas. Accordingly, the Commission should reaffirm its previous conclusion in this proceeding to open eligibility to obtain an LMDS license to all interested parties, which is consistent with the pro-competitive goals of the 1996 Act.

⁶ *Fourth NPRM* at ¶ 110.

⁷ *Id.* at ¶ 111.

⁸ H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 113 (1996) (“*Joint Explanatory Statement*”).

⁹ *Id.* at 170.

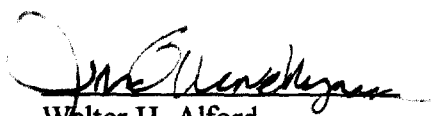
Finally, BellSouth notes that numerous LECs have invested substantial time and sums of money in advancing the state of LMDS technology and in anticipation of providing LMDS, as well as in participating on the advisory committee to develop a variety of broadband wireless services, including LMDS. An abrupt change now in the Commission's eligibility standards to obtain an LMDS license, when no rational basis exists for such a change, is clearly contrary to the public interest.

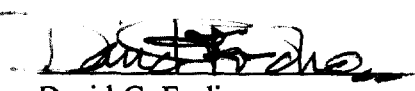
CONCLUSION

For the foregoing reasons, BellSouth urges the Commission adopt the rules and policies expressed herein.

Respectfully submitted,

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August 12, 1996

CERTIFICATE OF SERVICE

I, Donna M. Crichlow, hereby certify that copies of the foregoing "Comments of BellSouth" in CC Docket No. 92-297 were served via hand delivery, this 12th day of August, 1996, to the persons listed below.

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